

In order for a Certificate of Resale to be valid in Illinois, it must contain the items of information set out in 86 Ill. Adm. Code 130.1405(b). (This is a GIL).

May 3, 2001

Dear Xxxxx:

This letter is in response to your letter dated February 22, 2001, that we received on March 5, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

The purpose of this letter is to request your assistance in researching the Illinois sales tax statutes regarding the following sales tax issues:

Questions?

(1) Is an Illinois reseller entitled to receive a sales tax refund, remitted to it by the original seller, for Illinois sales tax that the reseller paid to the seller prior to the effective date of the reseller's Illinois certificate of resale?

(2a) Do the Illinois statutes provide for an abatement of sales taxes, for reasonable cause, where sales tax is collected and remitted twice on the same goods by two different entities?

(2b) Would the definition of reasonable cause encompass the situation where a reseller certificate has been applied for, but not yet received and made effective, by a newly formed corporation?

(3) Is the effective date for a newly formed Illinois corporation the date the reseller certificate was applied for, was issued, or is it the date the corporation began purchasing product as a reseller?

BackGround

I am attempting to remedy a situation in which sales tax was collected and remitted to the state of Illinois twice on the same goods. The sequence of transactions is as follows:

(1) ('A') sold product to ('B'). Sales tax was collected and remitted by 'A', on this sale.

(2) ('B') sold the same product to ('C'). Sales tax was not collected because ('C') had a reseller certificate.

(3) ('C') sold the same product to the end user ('D'). Sales tax was collected and remitted by 'C', on this sale by ('C').

The reason for this double taxation is that ('B'), a transportation utility, paid sales tax on items that it purchased from ('A') in the 37 days prior to the effective date of issue of its resale certificate. The ('A') invoices for all goods sold to ('B') oration were dated from April 30, 1998 to June 5, 1998. This period was prior to the effective date of the ('B') resale certificate, which was June 12, 1998. Some of these invoices were paid by ('B') prior to June 12, 1998 and some were paid afterwards.

We believe this situation should be remedied by having ('A') file the amended sales tax forms that claim a sales tax refund, and then remit this refund to ('B'). In this way there would only be one sales tax paid to the Illinois Department of Revenue on the same goods. However, ('A') tried this and is under the impression that it cannot do so because the ('B') reseller certificate did not become effective until June 12, 1998, subsequent to the dates of its invoices to ('B').

Would you be so kind as to provide me with a copy of any Illinois statutes, internal policy documents, and court cases that may be applicable to this issue? Please feel free to contact me should you have any questions or the need for additional information. Any assistance you may be able to provide in this area would be greatly appreciated.

We are enclosing a copy of 86 Ill. Adm. Code 130.1501 concerning Claims for Credit. Claims for credit and refunds are available when a person shows that he paid tax to the Department as a result of a mistake of fact or law. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. Claims for credit shall state the requirements that are contained in subpart (b) of the regulation.

Please note that the Department has no authority to compel the seller to file a claim for credit. Whether or not the seller refunds to the purchaser the taxes paid and files a claim for credit with the Department is a private business matter.

If the seller agrees to file a claim for credit, the purchaser must provide documentation that the purchase of the tangible personal property was not subject to tax, such as on the basis of a particular exemption. Under Illinois law, a sale of tangible personal property shall be made tax-free on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller in connection with certifying to the seller that the sale to such purchaser is nontaxable because of being a sale for resale. Please refer to 35 ILCS 120/2a.

Where an Illinois registered seller makes a sale in Illinois, it must either charge tax or document an exemption. To purchase items of tangible personal property tax free for the purpose of resale, purchasers should submit properly completed Certificates of Resale to sellers. In order for a Certificate of Resale to be valid in Illinois, it must contain the items of information set out in 86 Ill. Adm. Code 130.1405(b), enclosed.

Please remember that for a registration or resale number to be valid on an Illinois Certificate of Resale, it must be active at the time of sale. An Illinois registration or resale number becomes effective on the date it is issued. Illinois courts have held that it is proper for the Department to not allow Certificates of Resale that contain inaccurate information in the form of registration numbers

that are not active or are discontinued at the time of sale. See Rock Island Tobacco v Department of Revenue (1980), 87 Ill. App. 3d 476, 478.

Section 2c of the Retailers' Occupation Tax Act contains the following provision that would allow "other evidence" to be submitted by a purchaser to document the fact that its sale is for resale:

"Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale." 35 ILCS 120/2c

Such evidence could consist of, for example, an invoice from the purchaser to its customer, showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained an active registration or resale number and certifying that the purchase was a purchase for resale in Illinois.

Regarding your questions about reasonable cause, please be advised that there is no statutory or regulatory authority for the Department to abate taxes because of reasonable cause. Under the Uniform Penalty and Interest Act, only penalty can be the subject of an abatement request based upon reasonable cause. Please refer to 86 Ill. Adm. Code 700.400, enclosed. However, a taxpayer can petition the Department's Board of Appeals for relief under certain circumstances. See the enclosed copy of 86 Ill. Adm. Code 210.101.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.